

1 Cory S. Fein (State Bar No. 250758)
2 cory@coryfeinlaw.com
3 Cory Fein Law Firm
4 712 Main St., Suite 800
5 Houston TX 77002
6 Telephone: (281) 254-7717
7 Facsimile: (530) 748-0601

8 Attorneys for Relator
9 Travis Kiro

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION**

12 UNITED STATES OF AMERICA, ex
13 rel. TRAVIS KIRO,

14 Relator,

15 v.

16 JIAHERB, INC.,

17 Defendant.

Case No.: 14-cv-02484-RSWL (PLAx)

**RELATOR’S REPLY IN SUPPORT
OF MOTION IN LIMINE**

Judge: Hon. Ronald S.W. Lew
Courtroom: TBD

Action Filed: April 2, 2014
Trial Date: July 9, 2019

18
19 Relator files this reply in support of his motions in limine and states as
20 follows:

21
22 **A. RELATOR HAS NOT ABANDONED ANY CLAIMS**

23 Jiaherb’s Response to Relator’s Motions in Limine states that Relator
24 has “abandon[ed] his claim for underpayment of duties and any related
25

26 **Case No.:** CV 14-02484 – RSWL (PLAx)

27 RELATOR’S REPLY IN SUPPORT OF MOTION IN LIMINE
28

1 damages.” (Dkt. 102 at 2). Jiaherb similarly stated, in its portion of the
2 proposed Final Pretrial Order, that Relator “has abandoned and waived any
3 claim of damages, including any claim of unpaid or underpaid customs duties,
4 in this case.” (Dkt. 90-1). There has been no such abandonment, and Jiaherb
5 cites nothing to demonstrate any such abandonment. Relator has simply
6 elected to only seek recovery of civil penalties even though the statute allows
7 for the recovery of civil penalties and treble damages. 31 U.S.C.
8 §3729(a)(1)(G). While the Government has been damaged by Jiaherb’s false
9 representations, the amount of damages would be difficult to quantify which
10 is why Relator is focusing on statutory penalties. Notably Jiaherb admitted, in
11 its Memorandum of Contentions of Fact and Law, that it is “unaware of any
12 currently pleaded claims or defenses which have been abandoned.” (Dkt. 88
13 at 11.)

18 **B. MOTIONS IN LIMINE**

19 **1. MIL1: The Jury Should Not be Advised of the Penalties Imposed** 20 **by the False Claims Act**

21 Jiaherb seems to agree with Relator’s first motion in limine regarding
22 precluding evidence about the penalties imposed by the False Claims Act, but
23 then “reserves the right to request instructions advising the jury of penalties
24 sought.” Relator’s motion included legal support for Relator’s position that
25 the jury *should not* be advised of the penalties, either in evidence or in jury
26
27

1 instructions. (Dkt. 95-1 at 1-2.) Jiaherb's response fails to refute the
2 argument, and the motion should be granted.

3 **2. The Court should exclude all reference to the recovery of**
4 **attorneys' fees and expenses under the FCA.**

5 Relator's second motion in limine is unopposed and should be granted.

6 **3. The Court Should Exclude Evidence Regarding Any Purported**
7 **"Government Knowledge" Defense**

8 Jiaherb's response to Relator's third motion in limine is confusing.

9
10 Apparently Jiaherb is stating that it does not plan to argue that the
11 Government knew that Jiaherb was submitting false information in its 7501
12 Forms. Accordingly, it has no reason to oppose Relator's third motion in
13 limine, which should be granted.

14
15 **4. Jiaherb Should Not Be Permitted To Argue Or Introduce Evidence**
16 **That the Government Has Not Intervened**

17 Relator's fourth motion in limine is unopposed and should be granted.

18 **5. Defendants Should Be Precluded From Asserting Equitable**
19 **Affirmative Defenses**

20 Jiaherb's response fails to articulate how any of its affirmative defenses
21 related to Relator's actions or inactions could possibly apply to the facts in
22 this case, where Relator seeks to recover on behalf of the Government, rather
23 than for himself. Jiaherb's section of the pretrial order states only the
24 following as evidence in support of its affirmative defenses:
25
26
27
28

1 Persons and entities other than Jiaherb, over whom Jiaherb had
2 no supervision or control and for whose actions and omissions
3 Jiaherb is not legally responsible, caused various reasons for
4 relabeling, including without limitation the seller, warehouse
personnel, customers, and others.

5 (Dkt. 100 at 4; Dkt. 90-1 at 5). This position is legally flawed because an
6 importer has the nondelegable duty to insure its filings with CBP are correct.
7 Jiaherb cannot blame others for the false statements it made to CBP about the
8 products it imported.
9

10 First, Jiaherb cannot blame the seller (which in this case, was Jiaherb's
11 parent company). Federal law and regulations impose the duty of accurately
12 informing the United States about imported products on the U.S. importer, not
13 on the foreign seller. *See* 19 USC §1485; 19 CFR § 141.19(a); 19 CFR §
14 141.86.
15
16

17 Second, Jiaherb cannot blame its customs brokers. Jiaherb's customs
18 brokers at all times acted on behalf of Jiaherb. They informed Jiaherb that
19 Jiaherb was responsible for ensuring all information provided to CBP was
20 correct, and they sent Jiaherb copies of everything they filed on Jiaherb's
21 behalf so Jiaherb could correct any mistakes. (Dkt. 67-3 at ¶¶53-55.)
22
23

24 Third, Jiaherb cannot blame its customers; obviously Jiaherb cannot lie
25 to the United States Government about the products it is importing because its
26 customers asked it to. Jiaherb's customers do not have control over the
27

1 representations Jiaherb makes to the Government about the products Jiaherb
2 imports.

3 Fourth, Jiaherb cannot blame the warehouse personnel who performed
4 the label changes pursuant to Jiaherb's instructions. Jiaherb's warehouses
5 were not involved in Jiaherb's customs filings, and they received the
6 mislabeled products *after* they cleared customs, and they had no involvement
7 in making any representations to CBP. Jiaherb's warehouses removed the
8 incorrect labels and replaced them with accurate labels, pursuant to Jiaherb's
9 directions. They had no involvement in any of the false representations to the
10 Government.
11
12
13

14 **6. Defendants Should Be Precluded From Introducing Prejudicial**
15 **And Irrelevant Evidence about Travis Kiro**

16 Relator's Motion in Limine #6 seeks to preclude character attacks on
17 Relator regarding irrelevant matters, including (1) his job performance; (2)
18 Jiaherb's termination of his employment; (3) allegations that he took Jiaherb
19 customer lists or other documents; (4) his sister's business; and (5) other
20 matters.
21

22 Jiaherb opposes this motion because it wishes to introduce evidence of
23 Relator's "bias, lack of credibility, and motive to harm Jiaherb's business."
24 Relator agrees with Jiaherb that Relator's biases, credibility and motivations
25 are all fair game, and Relator is prepared to refute Jiaherb's attacks on these
26
27
28

1 matters. That said, the Court should not let this case devolve into an
2 adjudication of whether Relator was good at his job, whether Jiaherb had
3 adequate cause for terminating him, whether Kiro took any proprietary
4 information from Jiaherb when he left, or any other extraneous matters.
5 Relator is not asserting a claim for wrongful termination, and Jiaherb has not
6 asserted a counterclaim for theft of trade secrets (or anything else.) These
7 topics are not relevant to bias, motivation or credibility and the Court should
8 not permit Jiaherb to waste time on these issues.
9

11 **7. Jiaherb Should Be Precluded From Introducing Self-Serving**
12 **Evidence About Its Or Its Employees' Charitable Activities**

13 Relator's Motion in Limine #7 sought to preclude Jiaherb from
14 introducing evidence regarding supposed "good acts," such as charitable
15 contributions or community service, performed by Jiaherb or its employees.
16 Jiaherb's response failed to rebut Relator's legal argument other than citing
17 Federal Rule of Evidence 608, which deals with a "witness's reputation for
18 having a character of truthfulness or untruthfulness", and is not applicable to
19 evidence regarding good acts. Accordingly, this motion should be granted.
20
21
22
23
24
25
26
27
28

1 Dated: June 26, 2019.

2 Respectfully submitted,

3 /s/ Cory S. Fein

4 Cory S. Fein

5 Cory Fein Law Firm

6 712 Main St., Suite 800

7 Houston, TX 77002

8 (713) 730.5001 (office)

9 (281) 254.7717 (direct)

10 (530) 748.0601 (fax)

11 *Attorney for Relator Travis Kiro*